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APPEAL HEARING BEFORE THE STATE ENVIRONMENTAL COMMISSION STATE OF NEVADA

NDEP'S MOTION TO DISMISS PURSUANT TO NRS 233B.127(4)

COMES NOW, the State of Nevada, Division of Environmental Protection ("NDEP"), by and through its counsel of record, GEORGE J. CHANOS, Attorney General, and WILLIAM FREY, Senior Deputy Attorney General, and hereby moves the State Environmental Commission ("Commission") for its order dismissing the pending appeals pursuant to NRS 233B.127(4).

The 2005 session of the Nevada Legislature passed Senate Bill 428 which modified the jurisdictional limits of a contested case. The bill was codified at Nevada Revised Statutes (NRS) 233B.127(4). Chapter 233B of the NRS is commonly referred to as Nevada's Administrative Procedures Act. The purpose of at least a portion of this chapter is to provide state boards and commissions with the legal procedures they should follow in conducting contested cases. This chapter is applicable to the appeals of Beverly Hills Dairy's water pollution control permit. The statute on its face changed the jurisdictional limits of the Commission regarding who can appear before it. The statute requires that the hearing officer not admit as a party anyone who cannot demonstrate a direct financial interest in the outcome. The relevant portion of the statute states:

4. Except as otherwise provided in this subsection, a person must not be admitted as a party to an administrative proceeding in a

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contested case involving the grant, denial or renewal of a license¹ unless he demonstrates to the satisfaction of the presiding hearing

(a) His financial situation is likely to be maintained or to improve as a direct result of the grant or renewal of the license; or

(b) His financial situation is likely to deteriorate as a direct result of the denial of the license or refusal to renew the license.

The provisions of this subsection do not preclude the admission, as a party, of any person who will participate in the administrative proceeding as the agent or legal representative of an agency.

NRS 233B.127(4) (footnote added).

Thus, for any Appellant to remain a party to this proceeding, they must demonstrate that: their financial situation is likely to be maintained or improved as a direct result of NDEP's issuance of the permit. NDEP requests that the Commission, acting in its capacity as the presiding hearing officer, require all Appellants to demonstrate that they each meet the requirements of section 4(a). If any Appellant fails to make such a demonstration then the Commission should not admit them as a party.

Recently a panel of the Commission ruled in a case that this statute applied to appeals before the Commission. The panel based its ruling, in part, on an opinion of the Attorney General that is attached hereto as Exhibit 1. This panel should rely on the precedent set by the previous panel and apply the statute in the present case.

We believe that, as an initial matter, prior to proceeding, the Appellants should be required to present facts relevant to their standing under the current statute. If Appellants are unable to do so the Panel should dismiss this Appeal.

DATED this day of August, 2006.

GEORGE J. CHANOS Attorney General

By:

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¹ NRS 233B.034 defines license to include a permit.

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada,		
and that on this day of August, 2006, I deposited for mailing a true and correct copy of		
the foregoing NDEP'S MOTION TO DISMISS PURSUANT TO NRS 233B.127(4) on the		
following parties by first class mail, postage prepaid:		
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